

Tax Simplification and Justice

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I. Introduction

The traditional goals of any tax system are that it be fair, that it be simple and that it be efficient. Recent experience in the United States with proposals for the reform of a fairly traditional accretion-type income tax structure with steeply progressive nominal tax rates suggests that achieving all three of those goals in an existing tax system may be quite difficult. Indeed, it has become generally accepted that the goals of fairness, simplicity and efficiency may frequently conflict, which results in a need to choose among unpopular alternatives.

This paper will explore issues related to designing a system for internal taxation that is both just and simple. Although efficiency concerns are not of paramount importance given the definition of the project, they will be mentioned as well where they relate to the primary topic.

II. Discussion

In this part I will discuss the general meaning of the two terms that are the subject of this paper. I have divided my analysis of justice into two parts, economic justice and procedural justice. Although it is clear that there are aspects of any discussion about simplicity and justice about which people will disagree, I have attempted to make my analysis as free from value assessments as possible.

A. Simplicity

Achieving simplicity in a tax system requires the reduction of complexity. In discussing how to accomplish that, it is helpful to have a common under-

standing of the nature of complexity and its sources. A major reason why tax systems are complex is that they frequently contain provisions designed to achieve social and economic goals rather than being related to the function of raising revenue. Complexity is also present in a tax system in part because of the way in which the tax base is defined and in part because of the administrative provisions of the tax law, which are designed to enforce the collection of the proper amount of tax due from each taxpaying unit. I will also consider whether tax rates have any bearing on the complexity of the law. For purposes of this discussion, I have made two simplifying assumptions; one, that the taxpaying unit is the individual; two, that the period for which the tax is collected in an income tax system is one year.¹

1. Base. Consider, for example, a tax law that is contained in its entirety in the following single sentence:

Each individual shall report to the Collector on March 31 of each year the amount of income received by such individual in the preceding calendar year and pay at such time an amount of tax equal to 25% of the amount by which such income exceeds \$10,000.

It is hard to imagine a simpler statement of what the law is, but it is also obvious that such a tax law would be uncertain in the extreme. Wholly apart from its uncertainty about compliance, the law fails to give guidance as to the scope of the term "income". Does it, for example, mean gross receipts, gross income or net income; does it include gifts, salary diverted to a child, or money received under an obligation to repay it?

Under such a simple law, taxpayers would be uncertain as to how to report transactions they had already engaged in. In addition, they would not know how to arrange their future financial affairs because of uncertainty as to their tax effect. Wide disparities

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in interpretation could be expected and thus taxpayers who were similarly situated could be expected to have widely varying tax computations. Only even-handed and nearly universal enforcement activities could achieve uniform treatment of taxpayers. But the tax collectors would be confounded by the same uncertainties as the taxpayers, making even-handed enforcement impossible, despite their best intentions.

Perceiving that having so much uncertainty could not possibly make the tax a good one, the citizenry and the Collector would join together to ask the lawmakers to create a more certain law. The law could obviously be expanded without sacrificing too much simplicity. For example, income could be defined to mean:

All unencumbered receipts of cash or property from whatever source derived minus (1) all expenses incurred for the purpose of producing income or for conserving income producing property and (2) the cost of any property sold exchanged.

But that definition also leaves many questions unanswered, and it is possible that the clarification process would continue to add significantly to the length of the income definition.

It is thus clear that the tax law is complex in part because lawmakers have sought to respond to the desire for certainty on the part of taxpayers and tax administrators. Complexity of the sort that tries to adequately respond to questions about the applicability of the tax law to the myriad of different transactions that take place in a complex society is seemingly inevitable.

There is, however, another source of complexity in the tax law that should be recognized. Suppose, for example, that the government decided to encourage the development of a privately funded system for collection of trash on Sundays and holidays. In order to do so a provision might be added to the law that would state something similar to the following:

Income received for services rendered in the collection of trash, garbage and other refuse on Sundays and holidays shall not be included in income. Wages paid for such activities shall be deductible so long as the amounts of qualified material collected by the recipients is greater than the amounts of qualified material produced and not disposed of by the payors.

This amendment to the law would create a set of complications that have nothing to do with achieving greater certainty about the tax base. It is not merely an explication of the income concept, it is an attempt to accomplish a worthy social goal through a special tax provision. Qualifying for the exemption from tax is complicated, as is qualifying for the deduction. Both the ordinary concept of income and the ordinary concept of deductible expense are changed in order to accomplish a social goal. This sort of complexity in a tax system may also be inevitable. But acceptance of it is far less easily justified than acceptance of complexity that arises from the concern about certainty.

Complexity created by social engineering also has a way of breeding further complexity designed to limit the scope of the law to its perceived purpose. As the hypothetical law is now written, one could expect tax experts to use it not only for trash collection but for reducing taxes on their clients' unrelated income. An individual with sufficient financial strength might hire 500 trash collectors, paying them a minimum wage of \$2.65 per hour. They might, in turn, be hired out to third parties for \$5.65 per hour. The taxpayer would claim that the income received, \$5.65 per hour, was not includible in taxable income, whereas the wages to the trash collectors were fully deductible. This would create a gross profit of \$3.00 and a tax loss of \$2.65 per hour for each hour worked by the 500 employees. A wonderful tax shelter such as this would undoubtedly be quickly syndicated, with interests in the syndicates being sold to numerous investors who wanted to participate in an important social program and reduce their taxes at the same time.

The more intense trash collection activities carried on by the syndicates would produce two results. On the one hand, streets and public areas throughout would be much cleaner. On the other, the syndicate investors would be able to use their tax losses to offset their income from other money-making activities. If the tax system imposed a 30% rate on income, it would cost the government 90 cents for every hour worked by the trash collection employees. Thus, while the government might view trash collection on Sundays and holidays as an important social goal, it might well consider the lost revenue too high a price to pay for it and the dislocation in the tax burden to be too disruptive of the fairness of the tax system.

As a result, it would not be strange for the government to propose this addition to the law:

Losses from trash collection activities the sole reason for which is to produce tax losses to

offset income from other activities shall not be deductible except to the extent that income is produced by such trash collection activities.

The only reason for such a provision to exist is that another provision of the tax law was used not only for its original laudable social purpose but also to reduce taxes for wealthy taxpayers at the same time. The complexity that such a provision would add to the law would only compound the complexity created in the system by permitting the tax law to be used to accomplish social goals.

As we have seen, complexity in the way in which the tax base is defined comes in part from the desire for certainty on the part of taxpayers and tax administrators as to what the law actually means. The need for complicating clarifications is greatly increased by the provisions added to the tax law to promote social and economic goals and by provisions added to limit the application of such provisions when they are used to reduce taxes in an unintended fashion. There are thus two principal methods for reducing complexity in the definition of the tax base. One is to accept a level of uncertainty in the law. The other is to reduce the ways in which the tax law is used for purposes other than revenue collection.

2. Rate. In the single sentence tax law set out by way of example at the beginning of this part, the tax was to be imposed at a 25% rate on all income in excess of \$10,000 annually. This type of rate structure is known as a degressive structure because there are two rates, zero and 25%. It is also progressive in the sense that there is always some portion of an individual's income, however small, that is subject to the zero rate. On the other hand, such a rate structure is not nearly as progressive as the systems used in countries where there is a strong welfarist notion about using the tax system for wealth redistribution. The degressive rate structure used in the example is clearly a very simple structure.

In analyzing other tax rate structures from the standpoint of simplicity, the principal question is whether a more progressive rate system than the one used in the example is complex in comparison to a proportionate or a degressive system. Arguments have been made that more steeply progressive rates create complexity by inducing tax avoidance maneuvers.² But it is difficult to support the proposition that progressive rates in and of themselves create complexity. It is far more likely that

the base, the choice of taxpaying unit and the choice of the taxable period interact with the rates to create these sources of complexity.

Very high rates in an income tax system, for example, may result in the contraction of the base in an attempt to tax certain kinds of income at more favorable rates. This may, in turn, result in the creation of tax avoidance mechanisms that will create the more favored kinds of income. Progressive income tax rates may result in income shifting from year to year or among taxpayers.

The tax system may respond by adding complex new provisions designed to counteract these rate reduction schemes. But such a response does not create an argument against progressivity but rather only against setting rates too high. The question of what tax rates should be in any system is at bottom a political one, not one that has to do with tax simplification. Complexity is not inherent in any tax rate structure.

3. Administration. The complexity of the tax law that is related to its administration is similar to the complexity created by the desire for certainty with respect to the tax base. Both taxpayers and tax administrators would like to have much greater specificity than that contained in the single sentence tax law as to how reports are to be made, how they are to be examined and what the penalties are for not making them correctly. Thus, it is clear that any tax system will have a degree of complexity related to reporting and collection of the revenues.

On the other hand, it is fairly easy to permit inevitable complexities to burgeon into a very complicated and highly refined system full of arcane details. Nevertheless, the desire for simplification is frequently at odds with the desire for an elaboration of all the minutiae of the ways in which the government and the taxpayers can be expected to interact in the collection process. The need for complexity to ensure the propriety and fairness of the administration of the tax system to a very great extent outweighs the goal of simplification.

It is clear, however, that the fairness-related need for complex administrative systems does not have much effect on the majority of taxpayers whose chances for tax avoidance are very limited. In the income tax system in the United States, for example, the tax that wage-earners owe is collected by the employer and paid by the employer to the government. This means that the potential for failing to report a significant amount of income is very

slight if a person's sole source of income is wages. In addition, many such people are at low income levels, which means that the collection of small amounts of any unpaid tax would not be cost effective. As a result, it seems appropriate to try and simplify the compliance aspects of the tax system for such people.

It might, for example, be possible to eliminate the need to file any annual reports at all for persons whose income does not exceed a particular amount. This would substantially reduce the compliance burdens imposed on such individuals. Such a "return-free" system, as it is called in the United States, would be more successful in preventing tax evasion if there were consistent mechanisms for tax collection at the source that applied to interest and dividends as well as wages. In addition, carefully structuring the tax base so that most persons do not have much more to do than use a tax table for figuring their tax would greatly reduce compliance-related complexity.

Administrative complexity in the tax law can be considered in two different ways. On the one hand, where complexity arises from making certain rules about interactions between taxpayers and tax administrators, it seems appropriate that it should be accepted because it promotes greater fairness. On the other hand, for taxpayers with lower incomes or for those who do not engage in complicated financial and business transactions, the compliance aspects of the tax law can and should be greatly simplified.

B. Economic Justice

Economic justice is not a concept about which there is any broad consensus.³ But whatever one's notion of economic justice is, it will be clear that it is affected by the tax system. In this part I will describe the most significant ways in which the tax system affects economic justice issues.

1. Tax Burden. The principal issue of fairness with respect to taxation is whether the tax burden that any one individual bears is appropriate in relation to the tax burdens that are borne by other individuals in the society. The familiar notions of vertical and horizontal equity are of importance in assessing the fairness of any tax system.

In relating economic justice to allocation of the tax burden, it is generally assumed that individuals who are similarly situated should pay the same tax and that those who are not similarly situated should pay different amounts of tax. How should it be decided whether individuals are similarly situated? To make such a determination in the most accurate way possible, it is necessary to know not only what an individual's economic income from government sources is, but also what an individual's total economic income is. That includes both the value of general government services received by the individual and the amount of any direct transfer payments from the government that are received by the individual.

It is, however, clear that the value of general government services received by any member of society cannot be easily or precisely established. Thus, in attempting to allocate tax burdens, it seems appropriate to assume a pro rata allocation of such general services for purposes of simplicity.⁴ As a result, the base on which an individual pays tax is unrelated to the amount of government services s/he consumes.

In order to allocate the total tax burden, a society must first establish how much money it wants to spend to provide general government services and direct government transfer payments. These are fundamental economic justice issues and determinations about what is equitable will vary from society to society. In most countries, the revenue to pay for both will be raised in large part from internal taxation. Determining how the tax burden is to be distributed among the members of society who pay tax is equally as important to economic justice as setting the level of the general government services and the amount of the direct transfer payments, and the two are inextricably intertwined.

Setting the tax burden is in part a philosophical matter, tied to moral considerations about redistribution of societal wealth. It is also a political and economic question related to the optimal design of the tax system from the standpoint of raising revenue and from the standpoint of political reality. As a practical matter, the amount of tax each taxpayer pays is a function of the tax bases chosen by the society and the tax rates that are applied to the base or bases. Establishing a tax base and a tax rate structure that achieve economic justice can be quite difficult.

The following example illustrates the problem. It uses only four taxpayers and an arbitrarily determined subsistence level of consumable income of \$10,000. In addition, general government services are allocated per capita, even though an assumption that the wealthier members of society consume a greater amount of such services seems fairly well-accepted.⁵

	Income	Direct Grant	General Services
A	\$80,000	0	\$5,000
B	\$20,000	0	\$5,000
C	\$ 6,000	\$ 4,000	\$5,000
D	\$ 0	\$10,000	\$5,000

If the only base for taxation is income and a degressive rate structure is used in which the zero rate applies to the \$10,000 subsistence amount, the taxable rate would have to be set at 42.5% in order to raise adequate revenue from A (\$29,750) and B (\$4250) to pay for the general services and the direct grants. In such a case A would keep \$40,250 of her income over the subsistence amount, while B would keep only \$5750.

Given the circumstances in this example, a society might determine that it would be more appropriate for A to bear an even larger portion of the tax burden than B. It could accomplish that result by making the rate structure more progressive or by increasing the exemption amount, which would also increase progressivity. Thus, if A's tax rate is set at 47.6%, the amount of revenue needed can be raised by setting B's rate at only 6.8%. In that case A would keep \$36,800 of her income in excess of the subsistence amount, while B would retain \$9320. Alternatively, the amount that is exempt from tax could be raised to \$20,000, in which case A would have to pay tax at a 56.67% rate in order to raise the appropriate amount of revenue because B would pay no tax.

The real world is clearly more complicated than the four-taxpayer world of this example. By varying the example slightly to reflect the fact that there are considerably more B's than A's in the real world, it becomes clear that A's tax burden can be reduced because the total revenue base is increased by the larger number of B's. Thus, if the tax base is income

minus the subsistence amount and there are assumed to be fifty B's to one A, A's rate could be set at 24.3%, for example, with each B being taxed at a 3.4% rate.

As the example and the one variation on it suggest, structuring a tax system in which the actual tax burdens of the wealthier people are significantly greater than those of the poorer people may be adequate to finance general services for all members of society as well as direct grants to some members. It is clear, however, that establishing such a tax structure is complicated by a variety of economic and political factors.

In many societies it might be enough to say simply that economic justice would be best served by requiring A's tax burden to be increased to 56.67% of the tax base while B's would be reduced to zero. This idea of economic justice would have the virtue of simplifying administrative burdens on those members of society who are less well off. But it might create severe economic dislocation that would result in revenue losses and the need to look to other sources of funds.

Suppose, as an alternative, a society decided that any rate higher than 10% was too high. In our four-taxpayer world with an exemption amount of \$10,000, the revenue raised from internal taxation would be only \$8000. The remaining \$26,000 would have to be raised in some other fashion, potentially by having other taxes, potentially by borrowing, and potentially by printing more money. To the extent borrowing is chosen, the tax burden would be shifted forward to future taxpayers who would be required to pay off the debt. If more money is placed in circulation, the resulting inflation would spread the cost of paying for the additional \$26,000 of services and grants unevenly to those whose wealth or income did not rise in proportion to the rate of inflation. The society would need to choose which alternative seems best.

Setting proper tax burdens to achieve economic justice thus requires analyzing a number of different factors. Although vertical equity is the most significant issue with respect to economic justice and the tax burden, horizontal equity deserves attention as well. Horizontal equity requires individuals who are similarly situated pay the same amount of tax. But this depends on how "similarly situated" is defined. The determination will differ depending on whether equality is judged by income, consumption, wealth or some combination of the three. Whichever measure is chosen will be reflected in the tax base or bases the society selects for taxation.

If additional factors are deemed appropriate for use in measuring equality, however, they can create significant complications. Thus, if age, for example, or marital status, disabilities, accidental losses, windfall gains, place of residence or any number of other factors are considered to be sufficient reason for individuals to have different tax burdens, the system will become more complicated, because increasing the number of variables that are to be taken into account for fairness reasons makes it more difficult to evaluate whether taxpayers are similarly situated. Rigidly refusing to take such factors into account will make it easier to assess whether the tax burden is allocated properly, but it will conflict with the beliefs that many people have about the need to reflect a taxpayer's ability to pay in allocating the tax burden. As a result, horizontal equity may require consideration of a variety of factors in determining whether taxpayers are similarly situated, but only at a cost — additional complexity.

Achieving horizontal equity between taxpayers can be made easier if provisions that have social and economic purposes rather than income-defining and revenue-raising purposes are eliminated from the tax law. Such provisions make it much harder to ensure that those who are similarly situated pay the same amount of tax.

2. Other Economic Effects. Taxes tend to affect economic behavior in a myriad of ways. In a microeconomic sense, they can affect a person's motivation to work and to consume or save. In a macroeconomic sense, taxes can have a significant impact on a nation's balance of trade, on resource allocation among various sectors of the economy and on prices of consumer goods.

In the four-taxpayer world of our example, a decision to require A to bear the entire burden of tax would have to take into account whether a higher tax rate might make A choose to substitute leisure for more work, avoiding greater taxation and foregoing some consumption or saving. In addition, making such a decision would need to account for widely held perceptions that A's greater productivity should be taken into account and that the tax system should not influence her to work and consume or save less.

Fairness to individuals affected by a tax system would suggest that one goal of a tax system might be to make taxes neutral with respect to all decision-making. Thus, taxes should not greatly reduce a person's incentive to work or to save, nor should they play a large part in decisions to produce certain

goods in certain areas of the country or the world. In addition, a national tax structure should not reduce the competitiveness of goods in the world market. Nonetheless it is clear that tax systems are frequently used to induce behavioral changes in taxpayers and that these incentives are often viewed as promoting rather than lessening systemic fairness.

For example, if a particular region of a country is experiencing a decline in jobs and personal incomes, many would think it not only appropriate but also more fair to offer tax incentives that would preserve jobs in the region. But if this is done, it is clear that the tax system will not be neutral among methods of production or distribution of goods. Establishing priorities between maintenance of neutrality and tax incentives to retain jobs is necessary in designing a tax system that appears just.

The conclusions one reaches in balancing neutrality against incentives depend on how one views the tax system and its relationship to the general welfare. If the tax system is considered a proper vehicle for directing the allocation of social and economic resources, then the provision of tax benefits that deviate from strict neutrality seems quite appropriate. But it should be recognized that such use of the tax system undercuts the goal of economic justice because it permits resource allocation by tax experts who use the provisions designed to achieve laudable ends for the private and unintended benefit of themselves and their clients. Such distortions of the indirect grant-making provisions of the tax laws are inevitable.

On balance, it seems that both economic justice and simplicity are best served by a neutral tax structure so that decision making about economic incentives is centralized in the hands of elected officials with direct grant-making authority. A neutral tax system is more efficient as well. Thus, it is best to achieve wealth redistribution by having the tax system devoted to raising revenue and other parts of the government devoted to appropriately allocating it to achieve various social and economic goals that are extrinsic to revenue-raising.

3. Change. Most tax systems in the world are not static for long. One of the major factors engendering change is the use of the tax system to provide economic and social incentives. Policies change with time, events and policymakers; thus, a tax system that attempts to achieve social and economic policies must also change. In addition, change may come about to take into account accommodations made to existing laws, which reduce their impact on taxpayer activities.

There are obvious long-term effects of tax law changes, but it seems probable that change in the tax system has its greatest impact on economic justice in the short run. Thus, changes in the tax law that attempt to achieve greater simplicity should generally be designed to minimize their impact on society. Those changes that are made to achieve greater fairness or neutrality should, on the other hand, be expected to have immediate impact.

Nevertheless, they may also have by-products that are inappropriate or unforeseen.

Suppose, for example, that a change is intended to make the tax burden fairer between X and Y, which has the effect of also making it less fair as between Y and Z. Or suppose that achieving neutrality between investment in new plant and equipment and investment in research and experimentation creates unfairness between M and N, who had made alternative investments in the past. Changing the tax law in such ways may require the creation of additional complexities in order to relieve the inequities occasioned by change. The United States income tax system has dealt with this problem by using phase-ins, grandfather clauses, sunset provisions, delayed effective dates and even the creation of a parallel tax system, the alternative minimum tax. Determining which strategy for minimizing effects that are detrimental to fairness in any given case is an important aspect of economic justice in any tax system.

C. Procedural Justice

Two aspects of procedural justice are relevant in determining the fairness of a tax system. One has to do with the fairness of the administration of the law and the interaction between the administrators and taxpayers. The other has to do with the way in which the law is enacted and whether the processes for creating law permit the public to determine the law that will govern them.

As I stated in the discussion of simplicity, the desire to have clear rules about the amount of the liability, when it must be paid and compliance and enforcement can greatly complicate the tax law. But the complexity created by having such rules is more than balanced by the greater procedural fairness that the rules incorporate.

A system of rules about all significant aspects of the duties of taxpayers in regard to the determination and payment of tax is absolutely necessary for a just tax system. This is true for two reasons. First,

clear rules for taxpayers and tax administrators mean that tax enforcement procedures cannot be arbitrarily determined by a particular administrator in a particular case. Second, it makes the general compliance efforts more effective by assuring taxpayers that all other taxpayers will be treated equally in the administration of the law. Reducing perceptions of arbitrariness and unfairness can greatly increase overall compliance, which will in turn increase the fairness of the system as a whole.

Justice is enhanced not only by having rules about reporting and payment of taxes but also by having adequate mechanisms for dispute resolution that protect taxpayer rights and encourage prompt decision-making. To that end there should be rights of appeal to tribunals or arbitration panels that are comprised of persons who have adequate knowledge of the law and who are also disinterested in the outcome of the dispute. Disputes in the tax area are often freighted with emotional feelings that the tax burden in question is neither fair nor rational. Having impartial judges of the propriety of the positions taken by both sides is an important element of both actual and perceived justice. It is also important that the judges should be well-versed in the law, so that their judgments will be reasonably predictable, thus encouraging disputants to settle their differences without resort to the formal processes of dispute resolution.

Setting standards for public participation in the tax law-making process is considerably more difficult than establishing parameters for fairness in tax administration and dispute resolution. Recent scholarship in the United States suggests that democratic processes for law-making are flawed because lawmakers tend to develop a vested interest in staying in office.⁶ Thus, they tend to act in ways that will facilitate their being reelected by catering principally to well-financed special interests when it comes to advocating tax law changes. As a result, the public's best interest in its tax law is often not well-represented by its elected officials and the law becomes ridden with special interest provisions. What makes prospects for improvement in this situation so gloomy is the unlikelihood lawmakers will voluntarily relinquish their ability to respond to the special interests with special interest legislation.

In fairness to the lawmakers, it should be recognized that the line between the public interest and a special interest is seldom a bright one. An example of this problem, which is drawn from a troublesome provision in the United States income tax system,

pertains to the deductibility of expenses for meals and lodging while away from home on business. The intent of this deduction is to clarify the meaning of taxable income. It would not appear that it was introduced into the law as a type of social engineering. However, it has encouraged the growth of lavish expense account living. Travelers, oftentimes with the flimsiest business reason, rent luxurious hotel rooms, eat gourmet food and drink rare wines. Various proposals have been advanced for limiting these deductions on the theory that expenses that exceed a certain spartan level of traveling should be considered personal, not business expenses. 71

Such proposals have met heavy opposition from hotel and restaurant owners who believe that limitations on the deductions would hurt their businesses. Their opposition has been supported by unions representing the employees of hotels and restaurants. Thus, the opposition has a rather broad base, which cuts across most economic classes in the United States. Could it be said that the persons opposed to limiting the deductibility of meals and lodging represent a diverse enough group of people to be fairly representative of the public interest? An economist might reply that they are not representative of the public because their expressed interest is too narrow, promoting only the interest of those in the hotel or restaurant industry. But, if they were to argue that expenses for meals and lodging should not be limited to a spartan level unless all business expenses were similarly limited, they might be seen as more public-spirited. They would only be arguing for equality in treatment with other beneficiaries of business expenses.

To limit all business expense deductions in this fashion would significantly broaden the base for the income tax system. It would proceed from a defensible proposition: that lavish expenditures on business are in part personal. But whether the public would accept such a change as being in the public interest is conjectural. If such a change in the law were submitted to a vote in a public referendum, it seems unlikely that it would be favored. This is in part because some of the electorate would be unpersuaded that base-broadening would permit sufficient tax reduction to make business expenses have approximately the same after-tax cost as they had under the then-existing law. And it is in part because most of the electorate would not understand the rationale behind the change and would not be reliable supporters of their own interests. Instead they would be susceptible to the influence of special

interest advertising that cannot be expected to present a balanced view. As a result, opponents of the change would probably prevail even if the more rational view would see the change as being in the public interest.

What this suggests is that the first step to be taken to ensure greater procedural justice in the enactment of the tax laws is to educate the public as to what constitutes a rational system that is both simple and economically just. In addition, if the tax law cannot be radically changed to eliminate the power of the special interests, new mechanisms for public accountability of the lawmakers are definitely advisable. Thus, changes in the tax laws that truly benefit only special interests should be identified and their effect studied for a number of years after enactment. Having specific sunset dates as well might improve the system to a degree. And campaign finance reform might improve matters in some countries.

From the foregoing discussion it is clear that the goal of achieving procedural justice in the making of the tax law will not be easily accomplished. On the one side, there is an uninformed public that gives high priority to reducing its own tax liabilities. On the other, there is a smaller, informed public that purports to align itself with the uninformed group but instead obtains such large reductions in tax for its special interests that the larger public will unknowingly have to shoulder a greater burden of tax. Lawmakers have the best of both worlds. While they serve the special interests, they reap the benefit of the lack of knowledge of the uninformed group, which believes that the lawmakers are acting in their best interests. Remedying this situation may require radical changes, but it is unclear that there is great interest in making them.

III. Conclusion

Creating a tax system that is both simple and economically just seems to be almost impossible. It also seems exceptionally difficult to create a system of law-making that will always take into account the public interest in determining what the law is to be. Nevertheless, it is clear that some accommodations between simplicity and justice can be made.

In attempting to achieve a simple tax system, the role that social engineering plays in complicating the system cannot be over-emphasized. While

some may find it distasteful, there seems to be no better way to achieve simplicity than to rid the tax law of all provisions designed or retained to accomplish purposes that are extraneous to revenue-raising. Such a move would have the not entirely incidental effect of moving the tax law-making process in the direction of being more just. It is difficult, however, to imagine that such a radical prescription can be followed to the letter.

A less radical but equally important way of making the law simpler would be for taxpayers to be willing to accept simpler laws. This would clearly require that there also be a greater willingness on the part of the taxpayers to rely on the fairness of administrative interpretations of the law. This might require fairly major adjustments in administrative processes to better take the public interest into account. In addition, a swift and sure path to resolution of disputes by a disinterested judicial or other body set up for such a purpose would be needed. Such simplification would be greatly aided by attempts to lighten the reporting burdens of the vast majority of taxpayers.

Making a tax system that is just in addition to being simple is harder, because achieving what many people see as tax justice seems to frequently require complexity. In addition, setting tax burdens is a political and philosophical matter that does not submit to econometric analysis. Although such analysis can tell us what effects certain rates applied to certain bases have had in the past, the analysis is highly speculative as to the future because it depends so heavily on interdependent economic and social changes. This suggests that whether or not justice is achieved by a tax system may in part only be determined retrospectively.

The tax system in the United States has just undergone a rather significant change that has involved a certain amount of base-broadening as well as a substantial revision of the nominal rate structure. Whether or not these changes have accomplished their vaunted results of simplicity and fairness remains to be seen. The process of law revision in the United States is an ongoing one that is being emulated elsewhere. As more attempts are made and as we achieve a better understanding of whether

the changes do have the intended effects, we will come to better understand the process of trying to have tax law that is both simple and just.

Footnotes

1. These choices may, of course, create complications and injustices of their own. For example, it may be fairer to look at a family as the proper taxpaying unit because of the fact that its economic activities are frequently intertwined. If the individual is chosen as the unit, allocation of income assigned to members of the family group who are in lower tax brackets may be necessary. And economic justice may require adjustment of the rate structure to take into account differing economic impacts of the tax law on single people as opposed to married couples.
2. See, e.g., W. Blum and H. Kalven, *The Uneasy Case for Progressive Taxation* (1953), Midway Reprint 14-19 (1978). For a different perspective on progressive rates, see Bankman and Griffiths, *The Progressive Rate Structure* (unpublished manuscript).
3. See, e.g. J. Rawls, *A Theory of Justice* (1972).
4. See J. Pechman, *Who Paid the Taxes, 1966-1985*, 14 (1985) and materials cited therein.
5. *Id.*
6. See Anderson, *On the Unlikelihood of Sensible Tax Reform*, 4 *Am. Journal of Tax Policy* 81 (1985) and materials on public choice theory cited therein. Cf. J. Witte, *The Politics and Development of the Federal Income Tax* (1985); Simon, *Making Tax Law: The Process* (unpublished manuscript).
7. See U.S. Treasury Department, *Tax Reform for Fairness Simplicity and Economic Growth* (1984). This is the first Treasury study that eventually led to the Tax Reform Act of 1986, a much-changed version of the original approach.